

Remarks

The Applicants believe that this amendment places the subject application in better condition for allowance and in so doing introduces no new issues. Therefore, entry of this Amendment, reconsideration of the application, and allowance of all claims pending herein is respectfully requested.

Claims 1-36 were originally presented in the subject application. By the foregoing amendment, claims 1, 4 and 36 have been amended to more particularly point out and distinctly claim the inventive material of the subject invention. Non-elected claims 12, 34 and 35 stand withdrawn pursuant to Applicant's election in response to the Restriction Requirement mailed July 29, 2004. Claims 1-11, 13-33 and 36 remain in this case.

The Examiner's concerns are addressed separately below in the order raised in the outstanding Office Action.

No new matter has been added.

Rejections under 35 U.S.C. §103:

All of the claims stand rejected under 35 U.S.C. 103 as obvious in view of U.S. Patent No. 4,390,309 to Fangmann alone (claims 1-4, 17-20, 24, 25, 28, 29 and 36) or in combination with U.S. Patent No. 4,652,845 to Finkle (claims 15, 16, 21-23, 32 and 33) or WO 200054614 to Zollinger et al. (claims 26 and 27).

This rejection, to the extent deemed relevant to amended claims 1, 4 and 36 presented herewith, is respectfully traversed.

As amended, claims 1 and 36 specify that the legs depend 'immovably' from the support plate to form a 'solid state device'. Applicant believes this characteristic was implicit in the subject claims as originally presented, by virtue, for example, of the recitation in original claim 1 of: 'said plate extension being sized and shaped with a plurality of axial heights relative to said plate, to form a plurality of legs', such that no new search is required and no new matter has been added. Further support for this Amendment may be found in, for example, Figs. 1-5.

In addition, claims 4 and 36 have been amended to recite legs being 'spaced from one another to provide clearance therebetween', the legs being 'substantially equidistantly spaced from one another' and 'collectively forming less than or equal to 50% of a notional periphery of the assembly'. Applicant believes this characteristic was also implicit in the subject claims as originally presented, by virtue, for example, of claim 36 which recites a 'plate extension depending from said perimeter... on the same side of said support plate as said interior face and having a plurality of heights;... said plate extension including four legs having axial heights greater than the axial heights of the remainder of said plate extension', such that no new search is required and no new matter has been added. Further support for this Amendment may be found in, for example, the embodiment of Fig. 1 which clearly indicates that the four legs define a notional periphery (perimeter, as shown), and that the legs themselves comprise 50 percent or less of this periphery.

These characteristics are neither disclosed nor suggested by the cited prior art. Specifically, regarding independent claims 1 and 36, Fangmann fails to disclose a solid state device having immovable legs. Rather, Fangmann uses adjustable plates (30, 40) in order to properly engage a curved surface (pipe 60) from four opposite sides. The instant invention, on the other hand, advantageously accomplishes its engagement without any moving parts, to provide a single, easily installable, low maintenance device capable of stably engaging a variety of surface topographies.

Similarly, Finkle, which was cited for its disclosure of a circular support plate, also uses movable components to engage curved surfaces. In this regard, Finkle discloses a series of movable pole pieces or blades which are slidable relative to one another so that their ends may conform to the topography of a particular surface. Again, the instant invention advantageously accomplishes secure engagement of a variety of curved surfaces having various radii of curvature, without the use of moving parts as set forth in independent claim 1.

Moreover, embodiments of the present invention are capable of securely engaging surfaces of a particularly wide range of topographies, e.g., both cylindrical and spherical, without adjustment or other modification. This broad functionality is provided by use of legs that are all spaced from one another to provide clearance there between, and which collectively form 50 percent or less of the total periphery of the device as recited in amended claims 4 and 36.

In light of the foregoing, it is evident that the cited references show no recognition of the problem faced by the applicant, namely, that of providing a simple and secure mounting device capable of magnetically engaging curved surfaces of various topographies without the complexity and associated cost of multiple moving parts. As such, the suggested modification of Fangmann is not sufficiently pertinent to the particular problem faced by applicant as to reasonably suggest Applicant's claimed invention to those skilled in the art. There is therefore no suggestion in Fangmann that it should be modified to produce the subject invention as now claimed. Absent such a teaching, suggestion or incentive supporting the combination, one skilled in the art would not have been motivated to so modify Fangmann.

Moreover, and in the alternative, Fangmann and Finkle both effectively teach away from the proposed modification by their use of movable portions to engage curved surfaces. These references teach that such movable portions are required to securely engage a surface having a curved topography. In light of these teachings, the skilled artisan would not have been led to take the opposite approach of using immovable legs.

Further still, the invention as now claimed should be viewed as non-obvious because such a modification would effectively destroy the intended function of Fangmann. For example, Fangmann's device would not operate as intended if its surface engaging portions (including rectangular plates 30 and end plates 40) were rendered immovable to form a solid state device as claimed.

Moreover, even if Fangmann's legs were properly modified to be immovable, the result would not meet the limitations of amended claims 4 and 36. The synthesis of structure still would not come within the scope of Applicant's invention of legs being 'equidistantly spaced from one another' and 'collectively forming less than or equal to 50% of a notional periphery of the assembly', due to the rectangular configuration of plates 30, including the rectangular footprint of the overall device, and/or the effective lack of clearance-providing spacing between its legs due to these plates 30.

For each of the foregoing alternate reasons, applicants respectfully request reconsideration and allowance of amended claim presented herewith. The dependent claims are believed allowable for the same reasons as the independent claims from which they depend, as well as for their own additional limitations.

CONCLUSION

Applicant therefore further submits that all of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot.

This application is now believed to be in condition for allowance, and such action at an early date is respectfully requested. However, if any matters remain unresolved, the Examiner is encouraged to contact the undersigned by telephone.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-0734** referencing docket no. 99,316/1105.025. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



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Dated: February 4, 2005

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